



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 8, 1998

Ms. Marva M. Gay
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR98-1602

Dear Ms. Gay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116529.

The Harris County Criminal Courts Manager (the "Courts Manager") has received three requests for information relating to the Texas Ethics Commission's orders concerning Cynthia M. Crowe, Michael T. McSpaden, and Hannah L. Chow. The requestor seeks all information pertaining to these matters maintained by the Harris County Criminal Courts at Law Office of Court Management, including pleadings, notices, filings, depositions, interrogatories, admissions, discovery, answers, letters, and affidavits. You contend that Harris County need not comply with the request because the Courts Manager is not the custodian of the requested records. You also argue that the requested materials are records of the judiciary, and as such, are not subject to the Open Records Act.

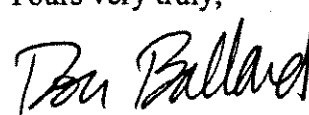
You first attest that the Courts Manager is not the custodian of any of requested records; therefore, he cannot respond to the request. We recognize that the Open Records Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988). Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Furthermore, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990) at 8. Although you do not indicate who is the custodian of the responsive documents, we presume from your arguments and the request for information that the only responsive

information to the request is maintained by the judiciary. Thus, it does not appear that the Courts Manager collects, assembles, or maintains any responsive information. If such is the case, you need not comply with the instant request.

You additionally state that "the request should be denied because the request calls for documents of the judiciary." The Open Records Act does not apply to records of the judiciary. Gov't Code § 552.003(B). The requestor asks for many documents that are undoubtably records of the judiciary. Consequently, these records need not be released under the Open Records Act. Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ); Open Records Decision No. 646 (1996) at 4 ("The function that a governmental entity performs determines whether the entity falls within the judiciary exception to the Open Records Act"). As records of the judiciary, however, the information may be public by other sources of law. Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974); *see Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 116529

cc: Mr. E. L. Wheeler
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